Banks: freedom to provide services and the general good. 2nd banking directive

1997/2153(COS) - 26/06/1997 - Non-legislative basic document

OBJECTIVE: this interpretative Communication from the European Commission seeks to provide more clarity and transparency in terms of the freedom to provide services and the interest of the general good in the Second Banking Directive (Directive 89/646/EEC). SUBSTANCE: contributions received from all the circles concerned (Member States, professional associations, credit institutions, consumer organizations, lawyers, etc.) had led the Commission to realize that there was still some uncertainty regarding the interpretation of basic concepts such as freedom to provide services and the interest of the general good, as set out in the Second Banking Directive. These uncertainties were such as to deter certain credit institutions from exercising the very freedoms which the Second Directive had set out to promote and, consequently, hampered the free movement of banking services within the European Union. The Commission, therefore, deemed it necessary to restate in a Communication the principles laid down by the Court of Justice and to set out its position regarding the application of those principles to the specific problems raised by the Second Banking Directive. The Communication provided all the parties concerned (national administrations, traders and consumers) with a reference document defining the legal framework within which, in the view of the Commission, banking activities benefiting from mutual recognition should be pursued. The Commission's interpretations and ideas were put forward in the light of Community policy regarding the information society, aimed at promoting the growth and movement of information-society services and, in particular, electronic commerce. They did not impose any obligation on the Member States. Lastly, they did not prejudge the interpretation that the Court of Justice might place on the matters at issue. The document is divided into two sections: - the first part analyses in turn the consultations on the notification procedure, the difficulties relating to the distinction between the freedom to provide services and the right of establishment as well as the question of the time when an activity falling withing the scope of the freedom to provide services might begin; - the second part examines the question of notification of rules adopted in the interest of the general good, problems connected with the application of rules adopted in the interest of the general good as well as private international law.